INTERNATIONAL PRIVATE AGREEMENTS IN THE FORM OF CARTELS, SYNDICATES, AND OTHER COMBINATIONS

Monopolistic agreements and combinations no longer halt at the frontiers of nations. With the internationalization of capital they have begun to reach out to all parts of the world, and to spin their network of threads from country to country. The decade preceding the world-war was characterized by the growth of international private commercial agreements, commonly known as international cartels.

Agreements or understandings between individuals and associations or combinations in two or more foreign countries have not been as rare in the combination and trust movement as is generally supposed to be the case. But the great number of divergent factors which interplay in world-trade, including shifting political conditions, endanger the stability of agreements and combinations of this kind, and have in the past been the cause of frequent changes in organization and of numerous dissolutions. International agreements have proved successful only when the domestic industries in the different member countries had been organized previously. Strong domestic competition and the presence of powerful outsiders at home have rendered futile the coming together of a few concerns, that were unable to control their own domestic market, with foreign concerns in the form of an international agreement. For the reason that many international cartels were short-lived, but chiefly because in certain countries they were unlawful, a considerable degree of secrecy has surrounded them. This explains why our economic literature offers but meager information on this subject. Then too international cartels have been formed in larger numbers only since the beginning of the twentieth century.

For a number of reasons special significance attaches to a study of these international combinations. In the first place, from the viewpoint of the theory of cartels, the pure cartel concepts find a

clearer expression in international than in national cartels, because the latter are more susceptible to the contingencies of legislation, local conditions, etc. Moreover, a consideration of the formation of international cartels, of the forces which produce them, their frequency, operation, and effects, has an important bearing on the question of the relation between cartels and protective tariffs. Finally, the economic changes brought about by the world-war, among them intensified nationalism, internationalized capitalism, expansion of domestic industry and commerce in the form of "war industries" and new competitive industries and the promotion of foreign trade, lend an added interest to our problem.

Prior to the war there were known to be one hundred and fourteen international cartels in existence,[1] distributed among the different industries as follows: Transportation, eighteen; coal, ores, metals, twenty-six; stones and earths, six; electrical industry, five; chemical and allied industries, nineteen; textiles, fifteen; stoneware and porcelain, eight; paper, seven; and miscellaneous, ten. In upward of a dozen of these private commercial alliances, American interests were parties to the agreements, some of which formed a network extending over the whole world.

The primary pupose underlying most of them was the preservation of an undisputed internal market. To this end a delimitation or division of sales territory was agreed upon. Regulation of prices was another important purpose, and in a number of instances price cutting and underselling was successully suppressed. The majority of international cartels formed in Europe were organized for regulating prices, credit terms, packing regulations, and selling practices generally. In other cases an exchange of patents or of technical processes was agreed upon, while still others provided for elimination of unprofitable lines of manufactures and restriction to certain standard sizes, grades, qualities, etc. The shutting down of certain inefficient plants, merging of others, and centering manufacture of special lines of goods in selected plants constituted further results of concerted action along international lines. Finally, curtailment of overproduction and joint purchase of raw materials or of supplies formed the basis of such commercial ententes.

[1] B. Harms, *Probleme der Weltwirtschaft* (1912), pp. 250 ff.

The conditions which make possible and give rise to international cartels depend on a number of factors. Of primary importance are the presence of international competition and the possibility of controlling the same. These occur most freely in the sphere of transportation and especially in ocean shipping. From the statement given above it will be seen that the largest number of international cartels are related to transportation.

Industries located close to foreign territory and whose products are bulky and of comparatively small value are more likely to suffer at the hands of foreign competitors located near by than from domestic competitors far away. A situation of this kind led to the formation of a number of international cement cartels.

It sometimes happens that an industry producing a specialty becomes localized near the boundary of two or more countries on account of the presence of water power, the proximity of raw materials or for some other reason. Within a limited geographical area manufacturing concerns of different nationalities grow up as competitors. Under such circumstances those who control the plants are constantly brought personally into contact with one another in business and social life. A certain community of interest is likely to develop which readily leads to some scheme of co-operation to prevent a competition that impoverishes all concerned. Several combinations comprising French and Belgian, French and Swiss, German, Austrian, and Swiss concerns were formed as a result of such industrial localization.

A similar *raison d'être* is given in the case of combinations which are representative of a certain industry in individual countries. Thus international agreements as to prices, credit terms, styles, etc., have been made which link together manufacturers of certain lines of textiles, silks, plushes, etc.

Experience has shown that international co-operation is readily accomplished in industries where production rests upon a monopoly of raw material, of patents, or of process of manufacture. Numerous international cartels have been formed on the basis of such monopoly rights in the chemical, electro-technical, metal, petroleum, and other industries. Considerable secrecy surrounds particular agreements which provide for the suppression or the non-working of

patents, and much criticism has been leveled at that practice. One of the largest international cartels, the International Federation of Bottle Factories, which was organized on November 15, 1907, had for its chief object the joint use of the so-called Owens patents.

Not a few international agreements cover the export trade of their respective members. Cartels of this kind usually apportion spheres of interest and seek to suppress competition among their members in foreign markets. The highest development of this type of international cartels consists in the operation of a central export office which serves as a joint selling agency. Individual members are not permitted to sell directly to foreign customers, but are required to market their export sales exclusively through the export office. In some cases a separate company or corporation was formed for this purpose. Generally, however, the export office was affiliated with some large member concern. Thus a London concern served as selling agent for the International Lead Cartel.

Over against combinations of producers there are also international buyers' combines. Their number had increased from year to year prior to the world-war. The economies of joint purchase of raw materials and semi-manufactured goods are of particular importance where their source of supply is limited to some over-sea country and where manipulations by middlemen may give rise to sharp price fluctuations. The International Borax Cartel, for example, operated a central purchasing office in London, the Borax Consolidated Company, Ltd., through which all the members were under contract to purchase their supplies of raw materials. Other international buyers' cartels operated at one time or another in the leather and rubber industries.

In the following brief mention is made of some of the most typical examples of international combinations, chiefly those where American interests were parties to the agreements. American concerns participated for a longer or shorter period in international agreements covering the following industries: steel, tobacco, aluminum, powder, sulphur, petroleum, borax, shipping, and several others.

An international association of railmakers was formed in 1884 by British, German, and Belgian manufacturers who engaged in

export trade at that time. The object of the international agreement was to divide all export orders for steel rails, each national group undertaking not to quote terms on products to be used in the countries of the other groups. The combination was dissolved in 1886, but later a new agreement was made to which also French, Italian, Spanish, and Russian interests became parties. It was renewed the last time in 1912 for a period of three years, the total quantity of rails to be exported being allotted as follows: British producers, 33.63 per cent; Americans, 23.13 per cent; Germans, 23.13 per cent; Belgians, 11.11 per cent; and French, 9 per cent.

The Atlantic Conference, better known as the North Atlantic Shipping Pool, formed in 1908, constituted one of the most comprehensive monopolistic agreements of an international scope. The combination embraced British, American, Belgian, Canadian, German, Dutch, and Russian lines, and regulated the steerage traffic between European ports and the United States and Canada.

The International Tobacco Agreement, made in 1902, linked up leading American and British tobacco interests, who after a bitter struggle finally joined hands for a division of business between themselves throughout the entire world.

In 1897 the American manufacturers of explosives and the German and British powder syndicates organized the so-called International Powder Trust. The different world-markets were divided up and an understanding was reached regarding basic selling prices. It is worth recalling that this combine also maintained a "common syndicate fund" for protecting the common interests against outsiders.

A somewhat similar combine was formed in 1906 between Italian and American sulphur interests.

The most conspicuous cases of international combines resting on the interchange of patents were the International Aluminum Syndicate and the International Glass Bottle Association. French, British, Swiss, and American aluminum manufacturers organized the former combine in 1901 for joint working of the Héroult patents. At the same time a division of territory and price agreements were arranged. A new agreement made in 1908 between the European interests and the Northern Aluminum Company, Ltd., was dissolved

in 1912 following prosecution under the Sherman Act. The International Glass Bottle Association, organized in 1907, was formed principally for the purpose of buying up the Owens patent rights. The successful effectuation of the scheme was an epochal achievement in the history of the glass industry. By acquiring the right to work the patents on the Owens machine, an automatic bottle-making apparatus, the Association succeeded in making the transition from the old glass-blowing to the machine stage of production fraught with less hardship to employers as well as employed than might otherwise have resulted. This is a case of international co-operation among private parties which made possible a great forward step in industrial progress without noticeably disturbing labor conditions or the financial status of hundreds of small manufacturing plants in Belgium, Scandinavia, Germany, England, Austria, and France.

That the combine also engaged in less commendable activities was revealed recently by Sir Leo Chiozza Money in a communication to *The Observer*, under date of March 7, 1920, as follows:

> Before the war there was a British bottle combine consisting of the chief firms in the trade, which had a working arrangement with the continental bottle combine. Between them they regulated output and maintained prices in spite of improvements in machinery. Great pressure was put upon independent firms to force them into the combination. One of the free firms wrote to me in 1910 that "the combine has several times approached the outside firms with the idea of persuading them to join, and owing to their refusal has twice reduced prices, to compel them to either lose money, shut down, or join the combine." The continental arrangement was ended by the war, but it is only one example of many that could be given to show how the trust can reach across political boundary lines and rise superior to such trifles as fiscal policy. When arrangements are made between trusts in countries A, B, and C, to delimit competitive boundaries and to settle at what prices goods shall be sold in each country, the political boundary line ceases to be a bar to monopolistic operations. In this, as in other matters, however, combines probably build greater than they know. Just as in its domestic aspect the combine functions to consolidate industries and to shape them into forms capable of further development, so international trust operations may in the long run help us to wider ideas of world commerce.

One of the economic effects of the world-war has been the disruption of most of the international cartels and agreements in which

German interests were represented, or at least the elimination of German participation. Legislation prohibiting trading with the enemy, the placing of certain trading activities under a system of licenses, amendments to company laws providing for a stricter control of stockholders, elimination of stock ownership in domestic companies by foreigners, and similar measures have made the continuation of most of the former private international commercial alliances impossible.

On the other hand, a number of new alignments have been effected during the war, and some older ones have been changed. Among the latter is the International Quinine Agreement, which prior to the war was based upon a division of territory among American, British, Dutch, French, and German companies. The original agreement specified that American and French manufacturers should keep out of Great Britain, while the British Company should in turn not attempt to do business in France and the United States. Under the new agreement the British quinine interests have greatly extended their sphere of influence among the growers of cinchona bark in Java and in the sales markets in other parts of the world.

Java furnishes approximately 95 per cent of the total world-production of cinchona bark. The agreement made in July 15, 1918, between the growers in Java and European manufacturers controls the bulk of the cinchona production of Java and therefore virtually amounts to a world-monopoly. The central office of the syndicate, known as the "Kina," is located at Amsterdam. The profits in the quinine business may be gauged by the fact that in 1918-19 the Bandoeng Quinine Works in Java, one of the participating concerns, distributed dividends amounting to 1,000 per cent.

Another strong combination with international ramifications which recently effected far-reaching changes in its organization is the Bradford Dyers' Association, Ltd., of England. The business of this association is that of dyeing on commission the products of those textile industries of which Bradford is the center. The chairman of the Association stated in his annual address on February 27 of this year that while the association had "sold its works in Kingersheim, Alsace, to a great organization which controls an overwhelmingly large percentage of the bleaching and dyeing works

in France . . . . we shall continue, as in the past, to give mutual aid to each other by the exchange of information of various kinds." The chairman reported also that the business at Bradford, Rhode Island, had been turned into an American company in which the British concern would in the future be interested as a stockholder only.

A new international agreement[1] became known recently in connection with a suit for breach of contract filed in the United States District Court at Boston on May 7, 1919, by E. Levinstein against E. I. du Pont de Nemours & Company. The agreement in question is alleged to have been made in 1916 between E. I. du Pont de Nemours & Company., of Wilmington, Delaware, and Levinstein, Ltd., of Manchester, England. It provides for an exchange of information regarding patented or secret processes and the apparatus, machinery, and plant necessary for the manufacture of dyes, intermediates, and raw materials. Under the terms of this agreement Levinstein shall have exclusive rights for the use, manufacture, and sale under its own and the Du Pont Company's patents and secret processes throughout Great Britain, Ireland, India, and all British Possessions, Colonies, and Dependencies (except Canada), France, Italy, Spain, Belgium, Holland, Portugal, Switzerland, Denmark, Norway, and Sweden, and non-exclusive rights throughout Canada and all other countries except those for which the Du Pont Company is to have exclusive rights. The Du Pont Company's territory shall be the United States of America and all its possessions present and future, Mexico and Central and South America, and it shall have non-exclusive rights throughout all other countries except those restricted to Levinstein's. The agreement further provides for a subsequent meeting for arranging selling facilities in Japan and China, if possible in the form of a joint selling company. Other provisions of the agreement relate to payments by the Du Pont concern to Levinstein's in connection with the manufacture of synthetic indigo and to royalties.

We alluded above to the North Atlantic Shipping Pool. Numerous other agreements as to rates, rebates, exclusive territories, and various other elements of competition were in operation for longer

[1] *Congressional Record*, May 8, 1920, pp. 7238 ff.

or shorter periods among ocean-shipping concerns of different countries prior to the war. Apparently the return to peace-time conditions has given a new impetus to this combination movement. Not long ago the formation of an agreement adopted by the steamship lines operating in the United Kingdom trade was announced. This news was followed closely by reports indicating the formation of a South American shipping conference.[1]

What appears to be a new field for international private agreements has been opened up by the progress made in wireless telegraphy. The important political aspects which might result from a monopolistic control of radio communication by private parties may ultimately lead to some form of supervision by the world-powers. As it is, initial efforts appear to have been set on foot for centralizing control of this important instrument of international communication in the hands of an international group of private interests.

The possibility of a further addition to the list of new international combinations is mentioned in a recent report issued by the British Board of Trade, a summary of which is given in the *London Times* of March 20, 1920. That report states that there is in the British electric-lamp industry a trade combination, the Electric Manufacturers' Association, which includes from 90 to 95 per cent of the industry, controls factors and retailers, fixes prices at all stages, and regulates output. The report goes on to say that the prices fixed by the Association become the standard prices for all lamps sold in Great Britain whether made by association or non-association manufacturers or imported from abroad. The Association is said to have been created primarily in the interests of three firms, the British Thompson-Houston Company, the General Electric Company, and Messrs. Siemens Brothers. It is also said that there is some danger of the interests of the British lamp industry being subordinated to American interests, since the largest of the three dominant firms in the Association is under control of an American electrical concern. The report says:

> There is a strong possibility of an international trade combination, embracing the leading manufacturers of America, Holland, and Great Britain. The

[1] *London Times*, May 1, 1920.

General Electric Company of America have a majority holding in the British Thompson-Houston Company, Ltd., in England, and have recently joined interests with Phillips Glow Lamp Works, Ltd., a very important lamp manufacturing concern in Holland. Recently, Phillips of Holland acquired about one-eighth of the Edison-Swan Electric Co., Ltd. (in England) shares, and two Phillips directors have joined the Ediswan board. Such an international "community of interests" might be able to dominate the world's lamp market, fix prices, regulate outputs, and allocate markets. There is already an arrangement between America and England whereby the respective markets are allocated, and British manufacturers are prevented from exporting to U.S.A., Mexico, and Japan. Moreover, the British associated manufacturers control, through the General Electric Company of America, the best American glass bulbs, and have prevented non-associated manufacturers from obtaining supplies of that particular bulb.

As stated above many, if not most, of the international organizations of producers have been terminated by the world-war. But although the war disrupted the form, it did not destroy the tendencies which received expression and importance through such international agreements. It merely diverted them into other channels. There are good reasons to believe that in the not too distant future international cartels will assume a much more important rôle in the trade relations among nations than in pre-war days.

First of all, during the war the combination movement made enormous progress in all the leading industrial countries of the world. In industries where all former efforts to bring about an effective organization had failed, powerful associations have been successfully formed and maintained to check competition and to co-operate in the common interest. In many cases pressure was brought to bear by government authorities to bring about solidarity and concerted action within an industry for the elimination of waste products for attaining greater efficiency through standardization, uniform accounting systems, etc., but chiefly in order to afford the government an opportunity to exercise its influence on prices from within a given industry.

In the past, international organization was conditioned largely on national organization. International combines represented but a more advanced step in the evolution of cartels. Many international cartels grew out of national cartels. With old and new combinations occupying a much stronger position within their home

markets than ever before as a result of the war, it seems that more prerequisites exist at the present time for the formation of international agreements. The latter are the logical result of the former.

Another factor tending in the same direction is the large debts incurred by the nations of the world during the war and subsequently. To meet these heavy obligations each country will be obliged, as a matter of national policy, to foster its domestic industries and to promote home production by all means within its power. It is but natural that a policy of that kind would involve the exclusion of competing goods of foreign origin. This does not necessarily have to be accomplished by tariff legislation and similar protective measures on the part of the government. A private agreement among organized producers of the various countries in a given industry, which would divide up the world's markets, might, *ceteris paribus*, accomplish the same results. It would in fact recommend itself because it would be less likely to lead to political friction such as might develop out of retaliatory tariffs, etc. The preceding Levinstein–du Pont agreement is a recent example of a territorial division of this kind.

There is a third factor to be considered. In the course of the war large new competitive industries have grown up, particularly in the so-called key industries, in all the leading countries of the world. Where prior to the war Germany reigned supreme, in the manufacture of dyes, optical glass, incandescent lamp mantles, etc., the United States, Great Britain, France, and Japan have succeeded in emancipating themselves. In other industries like the textile, copra oil, spices, furs, tobacco, etc., fundamental rearrangements have taken place. For example, in Hull and London the manufacture of margarine, fats, and oils from copra has been established on a permanent and self-supporting basis during the war. The manufacture of air nitrates in Germany, the great expansion of the textile and the leather-glove industries in the United States, the new white-lead industry in Australia, and numerous other instances may be cited to illustrate our point. Under war pressure and with government backing many of these new industries leaped into life like Pallas from Zeus's head—fully equipped and armed. In this way competitive conditions have been entirely changed

in domestic as well as in over-sea markets. Former purchasers and consumers have become producers and sellers. In many cases former customers have become competitors of their erstwhile suppliers. Besides, some of the large war industries are likely to look to foreign markets as an outlet for their surplus production, only to find that their competitors are doing the same thing.

All these factors might lead us to anticipate an era of the keenest kind of competition in international trade, in which giants are matched against giants, and in which whole nations may become embroiled. However, it is not at all unlikely that common business sense will prevail, that, rather than engage in destructive economic warfare, producers will again meet and seek a *modus vivendi* for the regulation of competition, particularly in neutral markets. Points of contact for rapprochements and private commercial ententes will readily be found under circumstances where the only alternative would be a fight for life and death. Indeed, there are numerous indications that plans for reaching an understanding have already been under consideration here and abroad in industries which extend beyond national boundaries. Last year one of the leading organs of the British steel and iron industry in discussing after-the-war competition very frankly pointed out the advantages of an international cartel agreement between British and American producers of iron and steel. A rumor to the same effect was voiced in the American press only the other day. In an editorial headed "International Export Agreements in Iron and Steel," the British *Iron and Coal Trades Review* of February 14, 1919, states that,

> while the other European producing nations have years of reconstruction ahead which will absorb their capacity and probably leave them as importers rather than exporters, it should not be difficult for the British and the American producers to come to some understanding to enable both countries to live in the export markets of the world, and to ensure a distribution of products such as will leave a fair margin of profit for the producer. It is a preliminary to such an arrangement that the manufacturers of both countries should be satisfied with a fair and legitimate share of the trade that is available, and in view of the successful arrangements which were carried on for so many years through the Railmakers' Association the hope may be expressed that an extension of these principles to other branches of the trade should be possible. The difficulties, of course, must not be underrated, but this much may be said—that political rivalries generally spring from trade rivalries, and if a political entente

is possible, why not also a business entente? In these circumstances it is satisfactory to hear that pourparlers have already been entered into, and an invitation has been sent by the British steel makers asking the Americans to send representatives over here in order to discuss matters . . . . The possibilities and benefits accruing from an international understanding at the moment are more obvious then they have ever been. . . . . It is to be hoped that before long iron and steel makers of both countries will get round a table and endeavour to discuss matters.

According to the *Drug and Chemical Markets*, of May 5, 1920, page 837, "The Diamond Match Co., of the United States, has proposed an amalgamation of all Japanese companies to control the match industry in Japan and China, and a working agreement with the Diamond Match Co. regarding supplies, as match wood is very scarce in Japan."

Last, but not least, international financiers and investors will, unless all signs fail, form a very powerful element in favor of international combinations in the future. Financial penetration of foreign countries has assumed gigantic proportions. Investments in foreign commercial and industrial enterprises have become so numerous of late as not to attract particular attention any more. For example, in Canada in the neighborhood of six hundred branch factories have been established during the past two decades, principally by American and British manufacturing concerns. Exchange conditions in the money market, fallen values of foreign securities, temporary financial embarrassment, etc., have made numerous large enterprises in foreign countries the victims of commercial infiltration by nationals of other countries. We mention only the well-known Austrian Skoda works now controlled by French interests, the domination of the iodine industry of Chile by the Iodine Syndicate of London, influence of Italian interests over the tobacco trade of Ecuador, new acquisitions of petroleum resources all over the world by the Dutch Shell and the Standard Oil interests, not to mention penetration of China by foreign exploitation and development concerns. Why, it is argued, should not the modern captains of industry, in harmony with the trend of the times, seek to safeguard their incomes by some such means of co-operation as, for instance, a community of interests? Capitalistic self-interest will

demand international organization of production and distribution as an instrument for strengthening its economic power or vice versa as a means of defense.

A new element, which may play a very important rôle in the future in connection with international cartel agreements, is labor. A certain degree of uniformity in the methods of production and in labor conditions generally is an important prerequisite to the formation of certain types of international combinations. Without such uniformity, for instance in cost of production, it would be difficult if not impossible to reach some understanding as to a common price policy. Between plants using efficient and up-to-date methods and technically backward plants it will be a difficult matter to arrange a joint working agreement. In the past the labor factor has been the rock upon which many a national cartel was wrecked, and which in other instances made impossible the bringing together of combinations of different countries. The establishment of a common interest among employers and owners and the necessity for them to act together in meeting demands of their combined employees has already constituted an important factor in the trust movement in Australia. What has happened there may repeat itself in the not too distant future on an international scale. The great progress made by organized labor in all parts of the world during the war, particularly the efforts of the International Labor Conference held at Washington, D.C., in 1919, and of the International Labor Office, is, therefore, not unlikely to facilitate the formation of international cartels.

With all indications to the effect that the problem of international combinations will assume a special degree of importance in the future, the legal aspects of the question also merit attention. As far as legislation is concerned, nearly all countries have statutory provisions of some kind or other which can be applied against combinations of a monopolistic nature. But they are not enforced with any degree of uniformity whatever. Under French and Austrian laws cartel agreements are non-enforceable. In a case relating to a cartel agreement between an Austrian and certain foreign concerns, the Austrian Supreme Court decided on September 25, 1905, that

the agreement was unlawful, even though price fixing was not expressly mentioned in the cartel contract. Nevertheless, combinations exist and are being formed right along in Austria as elsewhere. In Italy and Belgium cartel agreements are valid *de jure*, but the use of fraudulent means to effect a price policy is forbidden. Under German laws, which on the whole are friendly to cartels, agreements repugnant to good morals are unlawful. Under the English common law the courts are inclined to take a negative attitude toward monopolistic combinations. The most drastic legislation against monopolistic combinations is found in the United States and in British colonies.

Of the laws of the United States the following contain provisions which might be applied to international combinations: the Sherman Anti-trust Act of 1890, the Wilson Tariff Act of 1894 as amended February 12, 1913, the Panama Canal Act of 1913, the Shipping Act of September 7, 1916, and the Export Trade Act (Webb-Pomerene Law) of 1918.

The leading cases which have come up in our federal courts under the Sherman Anti-trust Act are the following: *United States* v. *American Tobacco Co.*, 221 U.S. 106, *Thomsen* v. *Union Castle Mail S.S. Co.*, 166 Fed. 251; *United States* v. *Pacific and Arctic Co.*, 228 U.S. 87, *American Banana Co.* v. *United Fruit Co.*, 213 U.S. 347, *United States* v. *Nord Deutscher Lloyd*, 223 U.S. 517., *United States* v. *Hamburg Amerikanische Packetfahrt Actien Gesellschaft*, 239 U.S. 466. See also 200 Fed. 806 and 216 Fed. 971.

In addition to the foregoing decisions there might be mentioned the consent decree entered in the District Court for the Western District of Pennsylvania in 1912, calling for the dissolution of the International Aluminum combine, and the decree of the United States District Court of New Jersey in 1914, dissolving a combination between J. and P. Coats, Ltd., and the American Thread Company. To sum up the court decisions under the Sherman Act which touch upon foreign commerce, it seems clear that the law applies to acts done by combinations within the United States in restraint of the foreign commerce of this country. The law has no extra-territorial force, and does not apply to acts done in a foreign country,

except where such acts in whole or in part are to be carried out in the United States or create a condition operative in this country.

Under section 73 of the Wilson Act every combination, conspiracy, trust, agreement, or contract between two or more persons or corporations engaged in importing any article from any foreign country into the United States is illegal when intended to operate in restraint of lawful trade or free competition or to increase the market price in any part of the United States of any article imported or intended to be imported or of any manufacture into which such imported article enters or is intended to enter.

On May 18, 1912, a petition was filed in the United States District Court, S.D., New York, by the federal government against Hermann Sielcken and others under these provisions of the Wilson Act. The action of the government was taken to prevent an alleged undue restraint upon interstate and foreign commerce in coffee, growing out of the so-called coffee-valorization plan. This involved agreements between the Brazilian state of Sao Paulo and a syndicate of bankers and others, whereby the disposition of a large quantity of coffee was placed in the hands of a committee, and competition in the importation into and sale of such coffee in the United States was controlled by that committee. The plan resulted in doubling the retail price of coffee in the American markets. Upon the advice of the State Department that representations had been made by the Brazilian government that the entire quantity of coffee which was being withheld from market had been sold to a large number of dealers throughout the United States, the suit was dismissed in May, 1913.

The Panama Canal Act of 1913 provides that no vessel may engage in the coastwise or foreign trade of the United States or pass through the Panama Canal if it is owned or controlled by any person or company doing business in violation of the Sherman Anti-trust Act or sections 73–77 of the Wilson Tariff Act of 1894. Jurisdiction in respect to this last provision is conferred on the federal courts.

The Shipping Act of September 7, 1916, contains several provisions which are applicable to agreements, understandings, and conferences in ocean transportation. They probably will serve as

a basis for action in case of complaints against international shipping combines in the future. Under section 14 of that Act the giving of deferred rebates, the use of "fighting ships," and retaliatory or discriminatory contracts and methods on the part of common carriers by water are prohibited. Section 15 provides that common carriers by water or other persons subject to the Act shall file agreements fixing or regulating rates or fares; controlling competition; pooling or apportioning earnings, losses, or traffic; allotting ports; limiting freight or passenger traffic; or providing in any manner for an exclusive, preferential, or co-operative working arrangement. The Shipping Board may disapprove, cancel, or modify agreements that are unjustly discriminatory or unfair or which operate to the detriment of the commerce of the United States. Agreements approved by the Board shall be lawful and shall be exempt from the Sherman Anti-trust, and sections 73–77 of the Wilson Tariff Act. Section 17 deals with common carriers by water in foreign commerce, and prohibits them from charging discriminatory rates or rates that are prejudicial to exporters of the United States as compared with their foreign competitors.

The Export Trade Act (Webb-Pomerene Law) of April 10, 1918, represents our most recent legislation relating to combinations. It allows the formation of associations or combinations of two or more individuals, partnerships, or corporations to engage solely in export trade. Such export associations are exempt from the Sherman Law, provided they do not restrain trade, enhance or depress prices within the United States, or commit an act of unfair competition against an American competitor. It should be noted that the Act does not license combinations to injure foreign competitors. It requires them to file certain statements, including copies of their agreements, with the Federal Trade Commission, and gives to that governmental agency certain powers of supervision.

A distinct feature of the Act consists in section 4, which gives extra-territorial jurisdiction to the Federal Trade Commission in cases of unfair competition against American competitors engaged in export trade, even when done outside the United States. This

jurisdiction applies, not only to combinations operating under the Webb-Pomerene Act, but also to individual American exporters. It remedies the defect in the Sherman Law which made itself felt in the case of *American Banana Co.* v. *United Fruit Co.*, mentioned above.

The Webb-Pomerene Act represents the first concrete effort on the part of any country to establish a definite policy toward export trade combinations. While it makes possible numerous advantages of co-operation and co-ordination of efforts, it contains at the same time certain safeguards calculated to prevent monopolistic abuses. Various features of the Act, particularly the requirements as to registration, have been recognized by foreign parliamentary committees as warranting them in recommending similar legislation.

Just what bearing the Act will have on international agreements remains to be seen. This much seems certain, that an international agreement or combination which tends to restrain trade unreasonably, involves unfair competition against other American exporters, or artificially and intentionally enhances or depresses prices within the United States would be unlawful under the Sherman Law as well as under the provisions of the Webb-Pomerene Law.

Generally speaking, therefore, international cartel agreements may be assumed to be invalid in those countries where cartel agreements are prohibited by civil or criminal law in so far as the courts of these respective countries would be called upon to deal with cartel matters coming within their jurisdiction.

In order to get around this legal insecurity of international combinations, various expedients have been employed. They are partly of a juristic, partly of an administrative character. A rather common method consists in locating the central or main office of an international combine in a country whose laws are liberal or whose courts follow a liberal policy toward combinations. Another expedient consists in having each member of the cartel deposit securities in a country that is friendly to combinations as a bond for faithful compliance with the terms of the contract. An arrangement is made that the securities thus deposited become automatically forfeited in case of failure on the part of a member to abide by his obligations under the cartel agreement.

The fact that international combinations have grown in number and strength, notwithstanding the enactment of anti-trust laws in most countries, and the apparent success with which such combinations have circumvented efforts made by individual states to supervise, control, or suppress them[1] have at various times given rise to plans for joint action by all states concerned. It was felt that a satisfactory solution of the problem was possible through co-operation among the different governments interested and through international law rather than through national laws.

The Brussels Sugar Convention represents the first successful attempt by a group of nations to wrestle with the problem of combinations. It was formed on March 5, 1902, and subsequently renewed several times, the last time in 1912 for a period of five years. The purpose of this convention was to arrest the practice of dumping sugar into foreign markets, which had been carried on by the sugar cartels of several European countries. These cartels were enabled to export sugar below the domestic market prices by reason of the fact that they were receiving sugar-export bounties from their own governments. The treaty was signed by Austria-Hungary, Belgium, France, Germany, Great Britain, Italy, the Netherlands, Spain, and Sweden, and was signed later by Luxemburg, Peru, Russia, and Switzerland. Article 1 of the treaty provides that the parties to the agreement shall suppress direct or indirect bounties which would benefit the production or exportation of sugar and shall not establish such bounties during the term of the treaty. In Article 4 it is provided that the signatories shall levy a special import tax on sugar imported from countries which allow bounties on the production or exportation of sugar, the amount of the tax to be equal to the value of the bounty.

One of the economic effects of the world-war was the disruption of the Brussels Convention. France withdrew on September 1, 1917, and other members followed later. The rearrangement of the world's map and the changed conditions arising therefrom as relating to the leading sugar-producing countries will add a number of new problems to future efforts at international regulation of sugar exports. Russia's position is totally altered. The Ukraine alone

[1] *Report of Committee on Trusts* (London, 1919), p. 33.

produces more then 80 per cent of the former Russian production, and most of the remaining part goes to Poland. A large part of France's sugar-beet area came within the war zone. England's interests, first as a buyer and consumer, and second on account of her sugar-cane producing colonies, have also been changed to a certain extent, while still other changes affecting Germany and Austria must be taken into account in case a new international sugar convention is to be formed. The sugar producers the world over have been well organized in the past along national lines. War-time food-control measures resulted in still greater co-ordination. It is not at all improbable that in the future various national units in the sugar industry will establish some form of co-operation relative to the export trade which will again necessitate interference by the former members of the Brussels Convention.

The success achieved by the Brussels Sugar Convention directly suggested to several statesmen the expediency of applying the same principle to other phases of international commerce and trade as a means of protection against unfair trade practices. In 1902 four leading European statesmen, independently of one another, advocated further action along the lines of the Brussels Sugar Convention. They were Count Sergius Witte of Russia,[1] Count Goluchowski of Austria,[2] Luigi Luzzati of Italy, and Herr Gothein,[3] a prominent member of the German Reichstag. Their avowed purpose was to protect European interests against American trusts and particularly against alleged dumping of American goods in European markets. However, no concrete results came from their proposals.

Some of the most objectionable practices of monopolistic combinations belong to the category of unfair competition. Laws for the suppression of that evil have been applied with considerable success in the prosecution of combinations. Indeed, an examination of recent debates in foreign parliaments on trusts shows a pronounced trend away from an exclusively repressive policy and in favor of government regulation coupled with enforcement of unfair competition laws. A similar movement, *mutatis mutandis*, is now shaping itself in respect of international combinations.

[1] *Commercial No. 1* (London, 1903), p. 7.

[2] *Neue Freie Presse* (Vienna, October 5, 1902).

[3] Session of the Reichstag of October 30, 1902.

In this connection the work of the International Union for the Protection of Industrial Property deserves notice. The membership of the Union embraced twenty-two countries, including the United States, at the time of its last meeting at Washington, D.C., in 1911. On that occasion the following provision was adopted for the suppression of unfair competition: "Art. 10 *bis*. All the contracting countries agree to assure to the members of the union an effective protection against unfair competition." On several occasions French and German courts have recognized their obligations under the foregoing agreement.

At the Sixth International Congress of Chambers of Commerce and Commercial and Industrial Associations at Paris in 1914 the subject of international action against unfair competition was placed on the program. Very little was done, however, outside of passing a resolution calling for further study of the problem by a special committee. At the Congress in Paris in June of the present year unfair competitive practices in international trade was again placed on the working program of the newly organized international chamber of commerce.

During the past two years official reports of the British Board of Trade and of our own Federal Trade Commission have taken cognizance of the question of international combines. The British Committee on Commercial and Industrial Policy after the War in its final report (London, 1918, p.39) recommended that all international combinations or agreements for regulating prices or for the delimitation of markets to which British companies or firms are parties, should be registered at the Board of Trade, which should also be given investigatory powers. The Report of Committee on Trusts of the Ministry of Reconstruction (London, 1919, p.28) states that "the question of the control of international trade by private interests is eminently one for international action."

In an address by Commissioner Huston Thompson of the Federal Trade Commission before the Second Pan-American Financial Conference at Washington, D.C., on January 22, 1920, a tentative plan for an international trade commission was discussed, and that Conference placed the study of the problem from the Pan-American point of view on its official working program.

Finally, mention should be made of a bill recently introduced in Congress (H. J. Res., No. 300. Sixty-sixth Congress, Second Session) which would have the President call an International Trade Agreement Congress for the pupose of considering means of eliminating and preventing unfair trade methods, practices, and policies and to establish a system of settlement of controversies arising therefrom.

WILLIAM NOTZ

WASHINGTON, D.C.